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SUBJECT: FOREIGN BUSINESS ACT AMENDMENTS MAY PASS BY END OF MONTH

REF: A) BANGKOK 4442; B) BANGKOK 4588

11. Summary: Thailand's National Legislative Assembly is set to again consider controversial amendments to the Foreign Business Act that would further restrict foreign ownership. Last week, an ad hoc committee approved a clarification of the definition of foreigner, removing a barrier that had earlier prevented the amendments' passage in August. The committee is still reviewing provisions that might grandfather companies that would be redefined as foreign under the new rules. Minister of Commerce Krirk-krai Jirapaet, who also chairs the ad hoc committee, hopes to submit the amendments for a vote by the full Assembly as early as November 28. End Summary.

12. A National Legislative Assembly (NLA) committee made a key revision to proposed amendments to the 1999 Foreign Business Act (FBA) that could allow the amendments to be considered by the full assembly by the end of November. On November 6, a working group from the NLA's ad hoc Committee on the FBA submitted its recommendation to the Committee for a clarified definition of "foreigner" as it relates to foreign ownership of companies in Thailand. The NLA had earlier expanded the definition of foreigner to include "management control" during August debate on the amendments (reftel A). However, management control was not defined. Minister Krirk-krai withdrew the amendments during debate and returned them to committee for review and revision.

13. The Committee has refused to disclose its new definition for management control, but a story in local newspaper Prachachart Thurakit indicated that the definition appears to be quite loose. According to the paper's source, a company with minority foreign shareholders who have complete management control would be considered foreign; however, if Thai partners have a voice in management decisions and concur with the views of the foreign shareholder, the company would be considered Thai.

14. At the Committee meeting to approve the definition of management control, Minister Krirk-krai detailed a new working group to review section 10 of the amendments which concern the status of companies that would be redefined as foreign under the new rules. The section as currently written would require companies in certain restricted areas to divest majority ownership within three years. The Committee aims to complete this most recent review and resubmit the amendments to the NLA floor on November 28.

15. At a meeting on November 9, members of the Joint Foreign Chambers of Commerce said they were concerned that the NLA would pass the FBA amendments quickly and without debate. Although the loose definition of management control could allow foreign companies to exploit loopholes and continue business in Thailand, businessmen at the meeting said it could also allow the RTG to arbitrarily force divestiture. The ambiguity, even for grandfathered companies, would make it difficult for company headquarters to authorize any new investments. Chamber members also voiced doubts that the lists of industries restricted from foreign participation will be pared back,

as the lists protect industries in which prominent families, influential with the current interim government, have financial stakes.

¶6. In a November 13 call on Ministry of Commerce Permanent Secretary Siripol Yodmuangcharoen by Econ and FCS Counselors, we

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noted the foreign business community's frustration that the latest revisions to the FBA amendments have not been made public. Econ Counselor continued that foreign investors are very concerned that the amendments' provisions apparently would require some businesses to divest their holdings and give up management control. Siripol said he would pass on the concerns, but said that what Thailand will be proposing in the new law is in line with definitions of foreign companies in other countries.

¶7. Comment: Somchai Sakulsurarat, deputy chair of the ad hoc Committee, had earlier assured foreign businesses and embassies that the FBA amendments would not pass during this current government without major revisions. He said that any bill that passed would allow current businesses to continue operations, and also pare down the lists of restricted sectors (reftel B). Somchai has recently cut back his contacts with the foreign business community; many believe he is doing so as he sees he will be unable to follow through on his previous commitment. End Comment.

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